

*procurement***CENTRAL INTELLIGENCE AGENCY**

WASHINGTON, D.C. 20505

General Counsel

OGC 82-05374

1 June 1982

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

The Central Intelligence Agency recently received for comment from your office a package of materials entitled the "Uniform Federal Procurement System" (UFPS). The package included three pieces of draft legislation to implement UFPS: "The Office of Federal Procurement Policy Act Amendments," "The Armed Services Procurement Act Amendments," and "The Federal Property and Administrative Services Act Amendments."

We advised your office by telephone, in a timely fashion, that the Agency objected to this legislative package. Our objections were based on the fact that the package did not address our concerns in this area as stated in our letter to you of 3 December 1981 and in a memorandum, dated 23 February 1982, from the Agency's Deputy Director for Administration to the Deputy Director, Office of Management and Budget.

As noted in our 3 December letter, our concerns in this area are two: the protection of the Agency's special procurement authorities and the assurance of continued recognition of the special statutory responsibility of the Director of Central Intelligence for the protection of sources and methods of intelligence as involved in the Agency's procurement process. We recognize that the Office of Federal Procurement Policy (OFPP) is proceeding under a statutory mandate to submit a "uniform procurement policy" to the Congress. Nevertheless, as we stated in our 3 December letter:

We do not believe that the Office of Federal Procurement Policy intend[s]...to be inconsistent with the Administration's determination to revitalize the nation's intelligence capabilities. ...[W]hile a uniform procurement system is appropriate for most federal agencies, it is not compatible with the Central Intelligence Agency's unique procurement needs and requirements for

flexibility and security. The Central Intelligence Agency's special procurement authorities are absolutely essential to the Agency's mission, and it is imperative that they remain unimpaired.

Despite this expression of our concerns, we find that they remain unaddressed in the most recent UFPS package, and that the package actually contravenes them in certain parts.

As stated in our 3 December letter:

We are fundamentally opposed to any provision having the potential for weakening the statutory foundation of the Central Intelligence Agency's special procurement authorities and transferring reliance to the vagaries of future bureaucratic processes. The Director of Central Intelligence must continue to have direct authority over and responsibility for the Central Intelligence Agency's procurement system. (emphasis added)

In order to address this concern, we proposed an amendment which would give recognition to and thereby leave clearly intact the Director's special authorities. We find, however, that none of the bills in the package contain language similar to the amendment we suggested. To the contrary, we find in Sections 5, 7 and 14 of "The Office of Federal Procurement Policy Act Amendments" (OFPP Amendments) various provisions which would actually weaken the statutory foundation of our procurement authorities and transfer reliance for protection of our concerns to the "vagaries of future bureaucratic processes."

Section 5 of the OFPP Amendments would amend Section 6 of the Office of Federal Procurement Policy Act by inserting a new Section 6. This section would permit the Administrator, OFPP, to promulgate "Government-wide procurement policies" to be followed by all executive agencies. This broad authority implicitly undermines the Agency's special authorities and as such is not acceptable. This concern is not met by the vague limitation that these policies shall be in accordance with "applicable laws."

Section 7 of the OFPP Amendments provides that a "Government-wide procurement regulation" shall be issued. The Director of Central Intelligence, however, is given no direct voice in the issuance of this regulation. Instead, his role is limited to having his views "solicited and taken into account" in the development of the regulation. Subjecting the Agency to the imposition of procurement policies from without, while relegating the Agency's role in the development of such policies merely to having its views solicited, is not acceptable.

Finally, Section 14 of the OFPP Amendments would amend the Office of Federal Procurement Policy Act so as to permit the

Director, Office of Management and Budget, to rescind any agency regulation not consistent with the policy directives issued by the Director, OFPP. This provision could be used in the future to ride roughshod over Agency regulations developed to accommodate our unique needs, and it is, therefore, unacceptable to us.

In sum, the provisions of the latest Uniform Federal Procurement System package not only fail to address our concerns, they actually represent an implicit assault on the Agency's special procurement authorities and its requirements related to the protection of sources and methods of intelligence. We therefore reiterate our objections to the UFPS legislative package, and we reserve the right to make these objections known as the legislative process proceeds.

I note that on 5 May 1982 Mr. Donald E. Sowle, Administrator for Federal Procurement Policy, Office of Management and Budget, appeared before the Subcommittee on Federal Expenditures of the Senate Committee on Governmental Affairs and gave testimony on the UFPS package in which he indicated that this package had Administration support. In view of this testimony, I think it is important that you know the depth of our opposition to this legislation and the need to amend it to take care of this Agency's special equities. I trust that, if for any reason our needs cannot be accommodated, you will promptly get in touch with me so that we can once again review the matter. We, of course, stand ready to discuss this matter with you at your convenience.

Sincerely,

[Redacted Signature]

Stanley Sporkin

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